UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

RODNEY BARBER,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	C.A. NO.: 05-390-ML
	:	
VERIZON NEW ENGLAND INC.	:	
	:	
Defendant.	:	

DEFENDANT'S MOTION TO PRECLUDE PLAINTIFF'S EXPERT

Defendant Verizon New England Inc. ("Verizon"), by its attorneys and pursuant to Fed. R. Civ. P. 37(a)(2), 37(a)(3), and 37(c)(1) and this Court's September 8, 2006, Order, moves this Court for an order precluding Plaintiff Rodney Barber from using any evidence from expert witnesses, by way of affidavit or otherwise, in opposition to Verizon's anticipated summary judgment motion.[1]

As the Court noted during the September 6, 2006, status conference, Plaintiff's initial required expert disclosures (a copy of which is attached as Exhibit A) were wholly inadequate and failed to comply with Fed. R. Civ. P. 26(a)(2) and the Court's Pretrial Order. The Court gave Plaintiff until September 13, 2006, "to amend his expert disclosures to comply with Rule 26 of the Federal Rules of Civil Procedure," and noted that "[t]o the extent that Plaintiff fails to amend his expert disclosures in accordance with Rule 26, Plaintiff may be prohibited from relying on any expert in support of his opposition to Defendant's motion for summary judgment or at trial." Order, ¶ 1.

At 4:50 p.m. on September 13, Plaintiff's counsel emailed to Defendant's counsel a revised expert witness disclosure in which he identifies one proposed expert, Dr. Rinchen-Tzo

[1] At present, Verizon is asking the Court to rule only with respect to the summary judgment motion. Verizon may revisit the issue of expert witnesses for trial purposes should the Court deny summary judgment.

Emgushov. A copy of the revised disclosure, with counsel's email, is attached as Exhibit B. Despite the fact that Plaintiff requested and received an additional two days from the September 11 deadline the Court originally had discussed at the status conference, his expert disclosures continue to be almost wholly non-compliant with Rule 26(a)(2). Specifically:

- There is no report prepared and signed by Dr. Emgushov.[2] In fact, Plaintiff's counsel states in his email that he merely "believes" Dr. Emgushov will testify in accordance with the disclosures, and that Dr. Emgushov has not conducted a final review of them.

- The disclosures do not contain a statement of Dr. Emgushov's opinions, other than an entirely irrelevant opinion that Plaintiff's trip to Las Vegas had no impact on his treatment or recovery time, nor do they state the basis or reasons for any opinions to which she might testify. Rather than opinions, the disclosures merely recite a handful of vague generalities about the effects of and treatments for hepatitis-C, and imply (with no explanation or elaboration) that the effects in Plaintiff's case were "fatigue, sexual functioning, strength, symptoms of depression, and his sleep cycle." In fact, the disclosures state that "Dr. Emgushov would testify as to the effect Mr. Barber's diagnosis has on *a person's* ability to perform major life activities." (Emphasis added). There is no relevance to what effects hepatitis-C *might* have on some *unidentified* person. The only relevant question is what effect Plaintiff's condition actually had on him personally – and the disclosures offer no insight into Dr. Emgushov's opinion on that topic.

- The disclosures indicate that Dr. Emgushov's "qualifications and past publications are listed in the attached Curriculum Vitae," but no curriculum vitae was attached. Therefore, Plaintiff has not described Dr. Emgushov's qualifications nor provided a list of her publications as required by Rule 26.

- Other than the fact that Dr. Emgushov was Plaintiff's treating physician, there is no reference to the data upon which Dr. Emgushov relied in forming her opinions (whatever those might be).

Plaintiff has had ample opportunity to produce compliant expert disclosures and has failed to do so. Any remedy other than preclusion will simply add delay to a process that already has been delayed by Plaintiff's failure to comply with the rules. Verizon, therefore, respectfully requests that the Court preclude Plaintiff from relying on any expert affidavits (or other form of evidence) in connection with Verizon's summary judgment motion.

[2] In fact, Verizon has yet to receive a copy of the disclosures signed by Attorney Gladstein, either.

Moreover, Verizon respectfully requests that the Court enter an expedited briefing schedule (if the Court believes any further briefing is necessary) and issue a ruling on this motion as soon as practicable, so that if the Court denies the present motion, Verizon will have sufficient time to depose Dr. Emgushov before the September 30, 2006, deadline set forth in the Court's September 8 Order.

VERIZON NEW ENGLAND INC.,

By its attorneys,

/s/ Raymond M. Ripple

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 14th day of September, 2006, a true copy of the within Motion to Preclude Plaintiff's Experts was served electronically through the ECF system on the following counsel of record:

Bruce P. Gladstein, Esq.
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/s/ Raymond M. Ripple
Raymond M. Ripple